



**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**

INVITATION FOR BIDS

IFB NO: 171C-22

REQUISITION NO: 197-002098

LOCATE AND MARK MBTA UTILITIES

Date Issued: November 24, 2022

**Bid Responses will be accepted through COMMBUYS.**



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# 1. Introduction

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”) is a member of Dig Safe Inc., (“Dig Safe”), a cooperative organization which provides prior notice to its members of proposed excavation in the public ways of the Commonwealth of Massachusetts among others. The MBTA seeks a qualified contractor to provide services to locate and mark utilities, wires, pipes, conduits (“duct lines”) under the surface of public ways and MBTA facilities, including MBTA Yards and MBTA Right-Of-Way areas, for the transmission of electricity, telecommunications, mechanical piping, plumbing piping and other products for the public convenience including services providing for the receipt of notification from Dig Safe and marking (Safety Red) areas of the public ways with which such notifications are concerned by painting distinctive lines on the surface of the parts of such ways above the duct lines of their customer. To assist the MBTA in this effort, the Authority is issuing this Invitation for Bid (“IFB”) to solicit proposals (“Bids”) from qualified Bidders who can meet the project requirements stated herein.

**Bids will not be publicly opened for this procurement.** The buyer responsible for this procurement will post an Initial Bid Summary Form to [COMMBUYS](#) within two business days of the due date that will detail the number of bids received, each Bidder’s name, and the bid amount for bidders and the public to view.

For all inquiries, please contact the following point of contact and list the IFB number:

Buyer: Chris Francis  
Email: [cfrancis@mbta.com](mailto:cfrancis@mbta.com)

## 1.1 SCOPE OF WORK

With respect to Locate Requests regarding the MBTA’s underground facilities that are generated by the Dig Safe System, Inc., the Contractor will perform all required location work as required in this contract and shall invoice the MBTA fixed monthly prices for three (3) year period.

The Contractor, acting as an independent Contractor and not as an agent of the MBTA, agrees to furnish labor, supervision, tools, equipment, materials, insurance, and transportation as required to perform the Locates. The Contractor is obligated to monitor and receive such calls from Dig Safe, twenty-four (24) hours per day, seven (7) days per week.

The Contractor shall comply with all applicable federal, state, county, city and local laws, ordinances, regulations, and codes, including but not limited to the Contractor’s obligations as an employer regarding health, safety, and payment of its employees, and identification and procurement of permits, certificates, approvals, and inspections required by the contract.

Should the Contractor enter into location service agreements with one or more additional Facility Owners, and the Contractor performs Locates at excavation sites where the MBTA and one of more Facility Owners have underground facilities, then the multi-party locate prices is already included in the fixed monthly prices as set forth in **Specification P-163 Street Marking Services, Appendix A**. No additional service costs will be charged to the MBTA for this Locate.

Mark the surface of any public ways and MBTA Facilities pursuant to any such notice in which a location of MBTA duct lines is indicated within **seventy-two (72) hours** after each such notification, except that, if notified by Dig Safe that an emergency situation exists with respect to any area of any such MBTA duct line requiring marking of the location thereof, shall make such duct line location on such public way surface within **two (2) hours** after the emergency notification.



## 1.2 REQUIREMENTS - GENERAL

The MBTA seeks a qualified contractor to provide services to locate and mark utilities, wires, pipes, conduits (“duct lines”) under the surface of public ways and MBTA facilities, including MBTA Yards and MBTA Right-Of-Way areas, for the transmission of electricity, telecommunications, mechanical piping, plumbing piping and other products for the public convenience including services providing for the receipt of notification from Dig Safe and marking (Safety Red) areas of the public ways with which such notifications are concerned by painting distinctive lines on the surface of the parts of such ways above the duct lines of their customer.

The quantities included are the historical count of Dig Safe Requests to the MBTA for 2020, 2021 and 2022 year to date. The MBTA makes no guarantee that any commodities or services will be purchased from any Contract resulting from this Bid. Any estimates or past procurement volumes referenced in this Bid are included only for the convenience of Bidders and are not to be relied upon as any indication of future purchase levels.

Year	Month	Standard Tickets	Emergency and On-Call Tickets	Ticket Total
2020	January	1,285	287	1,572
2020	February	881	181	1,042
2020	March	1,455	214	1,669
2020	April	1,200	157	1,357
2020	May	1,810	177	1,987
2020	June	2,320	224	2,544
2020	July	3,121	239	3,360
2020	August	2,605	212	2,818
2020	September	2,739	215	2,954
2020	October	2,733	227	3,000
2020	November	1,872	190	2,062
2020	December	1,284	200	1,484
<b>2020</b>	<b>Total</b>	<b>23,305</b>	<b>2,523</b>	<b>25,849</b>
2021	January	1,162	227	1,389
2021	February	1,009	295	1,304
2021	March	2,300	278	2,678
2021	April	2,612	227	2,839
2021	May	2,330	234	2,564
2021	June	1,609	164	1,773
2021	July	2,082	242	2,324
2021	August	2,307	267	2,574
2021	September	2,129	231	2,360
2021	October	2,214	222	2,436
2021	November	2,092	218	2,310
2021	December	2,089	257	2,346
<b>2021</b>	<b>Total</b>	<b>23,935</b>	<b>2,862</b>	<b>26,897</b>
2022	January	1,162	227	1,389
2022	February	1,071	300	1,371
2022	March	2,051	291	2,342
2022	April	2,268	233	2,501
2022	May	2,496	221	2,717
2022	June	2,561	200	2,761
2022	July	2,307	205	2,512
2022	August	2,439	231	2,670
2022	September	2,285	211	2,496
2022	October	1,875	180	2,055
<b>2022</b>	<b>Total</b>	<b>20,515</b>	<b>2,299</b>	<b>22,814</b>



### **1.3 APPLICABLE REGULATIONS AND STANDARDS**

The Contractor shall comply with all applicable federal, state, county, city and local laws, ordinances, regulations, and codes, including but not limited to the Contractor's obligations as an employer regarding health, safety, training, payment of its employees, and identification of permits, procurement of permits, certificates, approvals, and inspections required by the contract.

### **1.4 INVOICING AND PAYMENT**

Contractors must have a detailed invoice system that shall include the Contractor Name, Contractor "Remit To" Address, Contractor Invoice Number, Invoice Date, MBTA Purchase Order Number, MBTA Contact Name, MBTA Contact Information, MBTA Contact Department, Payment Due Date, Payment Terms and Discounts, No Sales Tax for Tax-Exempt Goods/Services, Description of Goods/Services Delivered (per purchase order), Total Amount Due (should agree with the purchase order amount), and Special Terms (or any additional information needed for accurate payment processing), provided at the time of order. Payment will be Net 30 by ACH.

### **1.5 REPORTING**

On a quarterly basis, successful bidder (s) will produce an electronic report of the number of Standard Tickets, Emergency/On Call Tickets by month to the Deputy Director of Power Systems and Maintenance.

## **2. Instructions to Bidders**

### **2.1 PROCUREMENT METHOD**

This IFB will be launched and managed via [COMMBUYS](#). Instructions for log-in and use of [COMMBUYS](#) are described in reference material on the website and at <http://www.mass.gov/anf/docs/osd/forms/instructions-for-vendors-responding-to-bids.docx>. Bidders may also contact the COMMBUYS Helpdesk at [COMMBUYS@state.ma.us](mailto:COMMBUYS@state.ma.us) or the COMMBUYS Helpline at 1-888-MA-STATE. The Helpline is staffed from 8:00 a.m. to 5:00 p.m. Monday through Friday (Eastern Time), except on federal, state, and Suffolk county holidays.

It is the responsibility of Bidders to maintain an active registration in COMMBUYS with a current email address and to monitor that email inbox for communications from the MBTA, including responses to Bidder questions. The MBTA and the Commonwealth assume no responsibility if a Bidder's designated email address is not current, or if technical problems, including those with Bidder's computer, network, or internet service provider ("ISP") cause email communications sent to or from Bidder and the MBTA to be lost or rejected by any means including email or spam filtering.

Bidder shall review and study all documents thoroughly and report any discrepancies, omissions, technical queries, or other clarifications via COMMBUYS.

Questions and clarification requests submitted by Bidder will, together with MBTA's response be made available to all Bidders via COMMBUYS.

### **2.2 PRE-BID CONFERENCE**

There will be no pre-bid conference for this procurement.



## **2.3 DUE DATE AND DELIVERY INSTRUCTIONS**

Bids are due by: 11/24/2022 at 2:00 PM, EST / EDT, for the work described herein. Bidder is required to prepare and submit all required documents to MBTA electronically via [COMMBUYS](#). **Bids will not be publicly opened for this procurement.**

Bidders are required to submit a Bid including all Bid forms contained in this package. Bidders shall complete the [Enclosure 1 – Bid Cover Letter](#) and complete the check boxes to indicate the bid documents that constitute their bid.

**Note:** Bid packages that do not follow instructions above may be disqualified.

## **2.4 LATE SUBMISSIONS, MODIFICATIONS AND WITHDRAWALS OF OFFERS**

Late Bids will not be accepted.

Any modification of an offer, except a modification for “best and final” offer, is subject to the same conditions stated in this solicitation. At any time after submission of proposals and prior to the final selection of Bidders for contract negotiation or execution, the MBTA shall have the option to provide Bidders with an opportunity to provide a “best and final” offer and may limit the number of Bidders selected for this option.

Modification resulting from a request for “best and final” offer received after the time and date specified in the request will not be considered. “Best and final” offers will be accepted by email to the designated buyer.

Bids may be withdrawn only by written notice sent to the Authority at any time before award. In the case of Bid withdrawals or late Bids the MBTA will archive the Bid materials and will not return them to the Bidder.

## **2.5 CLARIFICATIONS OF SPECIFICATIONS**

Any request for clarification to, or relief from, the specifications, must be submitted the “Bid Q&A” tab in COMMBUYS. Such comments and questions may be submitted up to one week prior to the due date listed in Section 2.3 and shall: (i) identify the document; (ii) identify the relevant section number and page number) or, if it is a general question, indicate so; and (iii) not identify the Bidder in the body of the question or contain proprietary or confidential information. Questions submitted in any other format or method than that described above will not be considered.

Responses to requests for clarification or questions will be provided in writing and issued by the MBTA via COMMBUYS. In addition, the MBTA reserves the right to, in its sole discretion, not answer all questions submitted by Bidders.

It is the Bidder’s responsibility to verify the MBTA’s receipt of questions and clarification requests.

Should the MBTA make changes to any specification, stipulation, requirement, or procedure, notification will be made to all Bidders in the form of written Addenda. No officer, agent, or employee of the MBTA is authorized to amend any provision contained in this solicitation, including the specifications, unless such amendment is issued as an Addendum and sent to all Bidders. If this solicitation is modified by an amendment, then all terms and conditions that are not modified remain unchanged.

## **2.6 MBTA STANDARD CONTRACT AND TERMS & CONDITIONS**

Bidders shall review and sign *Section 7.1 MBTA Standard Contract Terms and Conditions* to submit with



their bid. Bidders do not sign *Section 7 Massachusetts Bay Transportation Authority Standard Contract* upon submission of their bid. When the MBTA plans to award a contract, the MBTA buyer will fill out *Section 7 Massachusetts Bay Transportation Authority Standard Contract* and send it to the successful bidder for signature. See *Section 6 MBTA Standard Contract and Terms and Conditions Instructions for Vendors* for further details.

The MBTA does not encourage attempts to negotiate the *Section 7.1 Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions*. Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant.

## **2.7 COLLUSION**

The Bidder understands that any Bid submitted to the MBTA is made without collusion with any other Bidder submitting a Bid on the same commodity / service and is in all respects fair and without fraud.

## **2.8 PRICES**

Each Bid must contain the unit price(s) / rate(s) or lump sum price, extended price(s), and the grand total of the Bid. Bidders shall submit their pricing using **Form B: Requested Goods & Services Pricing Form**. The unit price / rate shall prevail in case of an error in price extension. Prices submitted shall be valid throughout the Acceptance Period (*see Section 2.10 Acceptance Period*).

## **2.9 ALTERNATIVE BIDS**

Alternative Bids will not be accepted for this solicitation.

## **2.10 ACCEPTANCE PERIOD**

The Authority requires a minimum Acceptance Period of at least one hundred and twenty (120) calendar days. In case the MBTA requires an extension, the MBTA will notify all Bidders accordingly. “Acceptance Period” for purposes of this solicitation means the number of calendar days available to the MBTA for awarding a contract based on the Due Date specified in this solicitation for receipt of Bids.

## **2.11 ELIGIBLE ENTITIES**

Any contract resulting from this Bid will be open for use by all MassDOT Divisions.

## **2.12 DELIVERY TERMS**

Bid prices must be inclusive, but not restricted to, all freight, packaging, handling, taxes, and duties for delivery at the specified address: As required by the Dig Safe ticket including public ways and MBTA facilities, including MBTA Yards and MBTA Right-Of-Way areas. For U.S. domestic deliveries, Bid prices must include F.O.B. destination with freight charges paid by Bidder. For cross border deliveries, Bid prices must include D.D.P. (Incoterms 2010).

## **2.13 PRE-CONTRACTUAL EXPENSES**

The MBTA shall not be liable for any pre-contractual expenses incurred by the Bidder in the preparation of its proposal. The Bidder shall not include any such expenses as part of its proposal. Pre-contractual expenses are defined as expenses incurred by the Bidder including but not limited to preparing its Bid in response to this solicitation, submitting its Bid to the MBTA, negotiating with the MBTA any matter related to this Bid, inspection, testing, shipping, and return shipping of proposed goods samples, or any other expenses incurred by the Bidder prior to date of award, if any, of the Agreement.





## **2.14 TAX EXEMPTION**

The MBTA is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates upon request. The MBTA is also exempt from Massachusetts State Sales Tax — Exemption Number E-042-323-989. Such taxes should not be included in Bid prices.

The Bidder alone shall be responsible for payment of all federal, state, and local taxes of all types and kinds applicable to such fees incurred under this Agreement.

## **2.15 INSURANCE**

The insurance policies that the successful bidder shall carry are outlined in the attached **MBTA Minimum Insurance Requirements** document with this solicitation. The attachment will be included with the solicitation posting on COMMBUYS. The successful bidder shall submit proof of insurance for the requirements detailed at the time of submitting their bid. If in the case they are not available at the time of preparing their Bid, the successful bidder certifies that they will carry such insurance policies and all costs resulting from this are included in their pricing. The successful bidder shall provide proof of insurance within three business days of conditional notice of award.

# **3. Selection Process**

## **3.1 BASIS OF AWARD**

Award will be made to the **lowest responsive Bid and responsible Bidder**. The MBTA reserves the right, in its sole discretion, to determine if a Bid is responsive and the Bidder is responsible. In determining whether a Bidder has the ability to perform successfully under the terms and conditions of the proposed procurement, the MBTA will consider such matters as the Bidder's integrity, compliance with public policy (e.g., EEO record, attainment of DBE goal, debarment status, etc.), record of past performance, and financial and technical resources. Bidder is required to complete **Form A: Pre-Award Bidder Evaluation Data Form**.

## **3.2 SCOPE OF PROPOSAL**

Pursuant to this Invitation for Bid ("IFB"), Bidders and Bids are required to comply with the terms and conditions stated herein to be deemed responsive and responsible. If a Bid does not meet all the requirements listed in the solicitation, the Bidder's proposal may be disqualified. Failure by the Bidder to examine all information pertaining to this solicitation or participate in any scheduled on-site visits will be at the Bidder's risk.

## **3.3 REJECTION OF BID**

The MBTA reserves the right to reject any and all Bids, in whole or in part, if such action is determined to be in the best interests of the Authority. Unless all Bids are rejected, award shall be made to the lowest priced responsive Bid and responsible Bidder.

## **3.4 CANCELLATION OF BID**

The Authority reserves the right to cancel this Bid at any time prior to execution of the Contract by all parties and without any liability against the Authority.

## **3.5 APPEAL / PROTEST PROCEDURES**

Bid appeals / protests relative to this procurement will be reviewed and adjudicated in accordance with the MBTA's Appeals / Protest Procedure - Goods & Services. A copy of this procedure is available by contacting the Buyer assigned to this procurement and available online at [www.mbta.com](http://www.mbta.com).



## **4. MBTA Policies**

### **4.1 SMALL, MINORITY, WOMEN, AND OTHER DISADVANTAGED BUSINESSES**

It is the policy of the Commonwealth and the MBTA to ensure non-discrimination in the procurement of goods and services. It is the MBTA's intention to create a level playing field on which all contractors and subcontractors can compete fairly for contracts. The MBTA promotes equity of opportunity in state contracting; and to that end; encourages full participation of certified small, minority, women, and other disadvantaged owned businesses as those terms are defined by the Commonwealth's Supplier Diversity office. The MBTA further recognizes the importance of meaningful partnerships involving subcontracting with certified small minority, women, and other disadvantaged owned businesses.

## **5. Contract Structure**

### **5.1 CONSTRUCTION OF CONTRACT**

The contract between the MBTA and the successful Bidder will include the following sections and documents that constitute IFB 171C-22, in order of precedence.

1. Any change orders or amendments, the most recent having precedence.
2. **Section 7: Massachusetts Bay Transportation Authority Standard Contract** and Terms & Conditions (including Supplemental Provisions and Insurance Requirements)
3. **MBTA Specification or Scope of Work**
4. **Form B: Requested Goods & Services Pricing Form**, or if accepted, Form C: Alternate Goods & Services Pricing Form



## Enclosure 1 – Bid Cover Letter

Massachusetts Bay Transportation Authority  
Attention: Procurement and Logistics Department  
10 Park Plaza, Suite 2810  
Boston, MA 02116

**Instructions:** Bidders shall complete the Bid Cover Letter below with their company name, total bid amount, and completed check boxes to indicate the bid documents that constitute their bid. **The Bid Cover Letter should be placed on the top of all bid documents when submitted to the MBTA.**

<b>IFB #:</b>	171C-22
<b>Project Name:</b>	Locate and Mark MBTA Utilities
<b>Bidder (Company Name):</b>	
<b>Total Bid Amount:</b>	

The undersigned Bidder having carefully examined and understood the documents included in the Invitation For Bids (“IFB”), hereby offers to MBTA the “*Bid*” as contained in the following responses enclosed with this letter:

Forms	Check to Indicate Submitted Bid Documents
Form A: Pre-Award Bidder Evaluation Form	<input type="checkbox"/>
Form B: Requested Goods & Services Pricing Form	<input type="checkbox"/>
Form C: Alternate Goods & Services Pricing Form (if applicable)	<input type="checkbox"/>
Signed Section 7.1 Massachusetts Bay Transportation Authority Standard Terms and Conditions  Note: Section 7 Massachusetts Bay Transportation Authority Standard Contract is NOT to be submitted; it is not completed until award	<input type="checkbox"/>
Proof of Insurance	<input type="checkbox"/>

We confirm that our Bid is in exact accordance with the solicitation with no exceptions to, or comments upon, the solicitation documents. We confirm that the submission of our Bid with the signature below makes all certifications as outlined in the solicitation documents. This Bid shall constitute a binding offer open for acceptance by the MBTA.

We confirm that this Bid has been prepared and is compliant with the solicitation instructions and agree to conduct ourselves in accordance with the solicitation. We confirm receipt of all addenda related to this solicitation. We confirm the 120 days Acceptance Period of this Proposal.

The undersigned are authorized to sign on behalf of and to bind \_\_\_\_\_ (include Bidder’s company name) to the provisions of this Bid.



Bidder (company name):

Authorized Representative Name:

(BLOCK LETTERS)

Authorized Representative's Signature:

Title:

Date:



## Form A: Pre-Award Bidder Evaluation Data Form

Pre-Award Bidder Evaluation Data			
Name of Firm:			
Federal Identification Number:			
Legal Address:			
Contact Name:			
Telephone Number:			
Email:			
<b>Please select one:</b> <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture			
Date Organized:		State Incorporated:	
Names of Officers or Partners:			
<b>Please provide details of any litigation, suits, or court action taken or pending against Bidder below:</b>			
<b>Please provide the following information that demonstrates that the Bidder together with its selected Affiliates and or Subcontractors has the required capabilities to successfully execute the Work. Please submit as attachments the following requested documents:</b>			<b>Check Attachment</b>
Audited financial statements for the last 3 financial years			<input type="checkbox"/>
Attach, if applicable, a list of similar current contracts that demonstrates your technical proficiency, each with contract value amount, name of contracting party, type of work completed, and percentage of work complete to date.			<input type="checkbox"/>
Attach, if applicable, a list of all principal subcontractors and the percentage and nature and value of work each will perform on this project. Principal items of work shall include, but not be limited to, those listed in the solicitation.			<input type="checkbox"/>



Please provide answers to the following questions:	Check Answer
Do you have any outstanding indebtedness or unsecured loans, or debts or trading losses not reported within the financial reports?	<b>Yes</b> <input type="checkbox"/>   <b>No</b> <input type="checkbox"/>
Do you have any contracts over the last two years that were assessed liquidated damages or termination for non-performance?	<b>Yes</b> <input type="checkbox"/>   <b>No</b> <input type="checkbox"/>

If the Bidder or subcontractor is a joint venture, submit this Pre-Award Bidder Evaluation Data form for each member of the joint venture.



## Form B: Requested Goods & Services Pricing Form

Bidders are required to quote firm fixed price(s) / rate(s) or lump sums. The quoted prices shall be inclusive of ancillary charges including but not limited to prevailing wages, tooling, equipment, transportation costs, customs, duty charges, and other associated charges. Bidders shall quote only on goods and services in strict accordance with the specifications / requirements.

Bidder's Name:					
Item Number	Item Description	Unit of Measure	Quantity	Unit Price	Item Total
1	Year One (1) of Three (3) Year/Thirty-Six (36) month Service Contract to Locate and Mark MBTA Utilities in Accordance with Power Department Specification P163 Rev. G	EA	12	\$ _____	\$ _____
2	Year Two (2) of Three (3) Year/Thirty-Six (36) month Contract to Locate and Mark MBTA Utilities in Accordance with Power Department Specification P163 Rev. G	EA	12	\$ _____	\$ _____
3	Year Three (2) of Three (3) Year Three (3) Year/Thirty-Six (36) month Service Contract to Locate and Mark MBTA Utilities in Accordance with Power Department Specification P163 Rev. G	EA	12	\$ _____	\$ _____
<b>Total Bid Amount / Basis of Award (add all item totals):</b>					\$ _____
<p>Additional specifications / requirements beyond those listed in this table are attached to this IFB. The attached specifications are part of the original posting on <a href="#">COMMBUYS</a> .</p> <p><input checked="" type="checkbox"/> YES      <input type="checkbox"/> NO</p>					
<p>Point of Destination for goods:</p> <p>As required by the Dig Safe ticket including public ways and MBTA facilities, including MBTA Yards and MBTA Right-Of-Way areas.</p> <p>Delivery Time from order receipt to delivery date:</p> <p>AS REQUIRED BY THE DIG SAFE TICKET.</p> <ul style="list-style-type: none"><li>▪STANDARD TICKET = SEVENTY-TWO (72) HOURS</li><li>▪EMERGENCY OR ON CALL TICKETS = TWO (2) HOURS</li></ul> <p><i>Please note: Bid prices must be inclusive, but not restricted to, all freight, packaging, handling, taxes, and duties for a delivery at the point of destination above (see Section 2.10 Delivery Terms). The MBTA will not pay separate customs duties for shipments and will refuse to accept any material requiring such payment.</i></p>					
<p><b>Prompt Payment Discounts:</b></p> <p>All contractors doing business with the MBTA shall provide a Prompt Payment Discount (PPD) for receiving early payments. Bidder shall provide a Prompt Payment Discount percentage (%) off the invoice payment, for each of the</p>					



payment issue dates listed. If no discount is offered enter 0%.

**Note:** MBTA standard prompt pay discount is 1% 20, Net 45 Days.

10 days		%	15 days		%	20 days		%	30 days		%
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## **6. MBTA Standard Contract and Terms and Conditions Instructions for Vendors**

### **6.1 MBTA STANDARD CONTRACT INSTRUCTIONS (SECTION 7)**

**Section 7 is not to be signed and submitted by bidders as part of their bid.** Only the awarded contractor shall complete Section 7 after the MBTA has determined the **lowest priced responsive Bid and responsible Bidder** (see *Section 3.1 Basis of Award*).

In order to award and execute the contract, the MBTA buyer will complete the necessary information on Section 7 and send it to the successful contractor to fill out the following sections and to sign it.

### **6.2 MBTA STANDARD TERMS & CONDITIONS INSTRUCTIONS (SECTION 7.1)**

Each bidder must review and sign Section 7.1 Massachusetts Bay Transportation Authority Standard Terms and Conditions and submit the signed Section 7.1 with their bid for the bid to be responsive and complete.

The MBTA does not encourage attempts to negotiate the Massachusetts Bay Transportation Authority Standard Contract Terms & Conditions (Section 7.1). Many of these provisions are required by law; others are longstanding MBTA policy / practice. Accordingly, Bidders / proposers should only redline or object to provisions that they find absolutely unacceptable. Any rejection or modification of these provisions may disqualify a Bid / proposal as being non-responsive or non-compliant.



## 7. Massachusetts Bay Transportation Authority Standard Contract

<b>CONTRACTOR LEGAL NAME:</b> (and d/b/a):		Massachusetts Bay Transportation Authority (MBTA)	
<b>Legal Address (W-9, W-4, T&amp;C):</b>		10 Park Plaza Boston, MA 02116	
<b>Contract Manager:</b>		<b>Billing Address (if different):</b>	
<b>E-Mail:</b>		<b>Contract Manager:</b>	
<b>Phone:</b>		<b>Email:</b>	
<b>Fax:</b>		<b>Phone:</b>	
<b>Contractor Vendor Code:</b>		<b>Vendor Code Address ID (e.g. "AD001"): AD</b>	
<b>Vendor Code Address ID (e.g. "AD001"): AD</b> (Note: The Address ID must be set up for EFT payments.)		<b>RFR/RFP/IFB/Procurement or Other ID Number:</b>	
<b>NEW CONTRACT</b> <b>PROCUREMENT OR EXCEPTION TYPE: (Check one option only)</b> <input type="checkbox"/> <b>Statewide Contract</b> (OSD or an OSD-designated Department) <input type="checkbox"/> <b>Collective Purchase</b> (Attach OSD approval, scope, budget) <input type="checkbox"/> <b>MBTA Procurement</b> Attach RFR/RFP/IFB and Response or other procurement supporting documentation <input type="checkbox"/> <b>Emergency Contract</b> (Attach justification for emergency, scope, budget) <input type="checkbox"/> <b>Contract Employee</b> (Attach <u>Employment Status Form</u> , scope, budget) <input type="checkbox"/> <b>Legislative/Legal or Other:</b> (Attach authorizing language/justification, scope and budget)		<b>CONTRACT AMENDMENT</b> Enter <b>Current Contract End Date</b> <u>Prior</u> to Amendment: _____, 20____. Enter <b>Amendment Amount:</b> \$_____. (or "no change") <b>AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.)</b> <input type="checkbox"/> <b>Amendment to Scope or Budget</b> (Attach updated scope and budget) <input type="checkbox"/> <b>Interim Contract</b> (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> <b>Contract Employee</b> (Attach any updates to scope or budget) <input type="checkbox"/> <b>Legislative/Legal or Other:</b> (Attach authorizing language/justification and updated scope and budget)	
<b>The MBTA Terms and Conditions (T&amp;C) under Section 7.1 has been executed, and is incorporated by reference into this Contract.</b>			
<b>COMPENSATION:</b> (Check ONE option): The MBTA certifies that payments for authorized performance accepted in accordance with the terms of this Contract <input type="checkbox"/> <b>Rate Contract</b> (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input type="checkbox"/> <b>Maximum Obligation Contract</b> Enter Total Maximum Obligation for total duration of this Contract (or <b>new</b> Total if Contract is being amended). \$_____.			
<b>PROMPT PAYMENT DISCOUNTS (PPD):</b> MBTA payments are issued through EFT 45 days from invoice receipt. Contractors requesting <b>accelerated</b> payments must identify a PPD as follows: Payment issued within 10 days _____% PPD; Payment issued within 15 days _____% PPD; Payment issued within 20 days _____% PPD; Payment issued within 30 days _____% PPD. If PPD percentages are left blank, identify reason: agree to standard 45 day cycle only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)			
<b>BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT:</b> (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)			
<b>ANTICIPATED START DATE:</b> (Complete ONE option only) MBTA and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input type="checkbox"/> 1. May be incurred as of the <u>Effective Date</u> (latest signature date below) and <b>no</b> obligations have been incurred <b>prior</b> to the <u>Effective Date</u> . <input type="checkbox"/> 2. May be incurred as of _____, 20____, a date <b>LATER</b> than the <u>Effective Date</u> below and <b>no</b> obligations have been incurred <b>prior</b> to the <u>Effective Date</u> . <input type="checkbox"/> 3. were incurred as of _____, 20____, a date <b>PRIOR</b> to the <u>Effective Date</u> below, and the parties agree that payments for any obligations incurred prior to the <u>Effective Date</u> are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the MBTA from further claims related to these obligations.			
<b>CONTRACT END DATE:</b> Contract performance shall terminate as of _____, 20____, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
<b>CERTIFICATIONS:</b> Notwithstanding verbal or other representations by the parties, the " <b>Effective Date</b> " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the MBTA, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached <u>Contractor Certifications</u> (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable MBTA Terms and <u>Conditions</u> , this Standard Contract Form including the <u>Instructions and Contractor Certifications</u> , the Request for Response (RFR), Request for Proposal (RFP), Invitation for Bid (IFB) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR/RFP/IFB and the Contractor's Response only if made using the process outlined in <u>801 CMR 21.07</u> , incorporated herein, provided that any amended RFR/RFP/IFB or Response terms result in best value, lower costs, or a more cost effective Contract.			
<b>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</b>  X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature) Print Name: _____ Print Title: _____		<b>AUTHORIZING SIGNATURE FOR THE MBTA:</b>  X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature or utilize an MBTA approved electronic signature) Print Name: _____ Print Title: _____	



## **7.1 STANDARD TERMS AND CONDITIONS**

Upon execution by the Contractor, these Terms and Conditions will be incorporated by reference into any Contract executed by the Contractor and the Massachusetts Bay Transportation Authority (MBTA), in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the MBTA, programs provided, or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The MBTA is entitled to ownership and possession of all deliverables purchased or developed with MBTA funds.

### **7.1.1 Contract Effective Start Date**

Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the MBTA, a later date specified in the Contract, or the date of any approvals required by law or regulation, whichever is later.

### **7.1.2 Payments and Compensation**

The Contractor shall only be compensated for performance delivered and accepted by the MBTA in accordance with the specific Terms and Conditions of a Contract. Overpayments shall be reimbursed by the Contractor or may be offset by the MBTA from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the MBTA from all claims, liabilities or other obligations relating to the performance of a Contract. See [Form B: Requested Goods & Services Pricing Form](#) for agreed pricing.

### **7.1.3 Contractor Payment Mechanism**

All Contractors will be paid using the MBTA invoicing system and Contractor will submit its invoice with all supporting documentation as prescribed in a Contract. The MBTA shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection, if payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable the MBTA to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty.

### **7.1.4 Contract Termination or Suspension**

A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The MBTA may terminate a Contract without cause and without penalty or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate MBTA action. Upon immediate notification to the other party, neither the MBTA nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

### **7.1.5 Written Notice**

Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the MBTA or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to



perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

#### **7.1.6 Record-keeping and Retention, Inspection of Records**

The Contractor shall maintain records, books, files, and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The MBTA shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

#### **7.1.7 Assignment**

The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract without the written approval of the MBTA, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the MBTA to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counterclaims or any other MBTA rights which are available to the MBTA against the Contractor. The sale of fifty percent (50%) or more of the equity ownership of a Contractor shall be considered an assignment requiring the prior written approval of the MBTA. Impermissible assignments shall be null and void.

#### **7.1.8 Subcontracting By Contractor**

Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the MBTA and shall be consistent with and subject to the provisions of these MBTA Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility, or liability arising under a Contract. The MBTA is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party. Subcontracts shall note that the MBTA is not a party to the subcontract. Failure to promptly pay a Sub-Contractor for work performed where the Contractor has been paid by the MBTA shall constitute a material breach of the Contract between MBTA and Contractor.

#### **7.1.9 Affirmative Action, Non-Discrimination in Hiring and Employment**

The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

#### **7.1.10 Indemnification**

The Contractor shall release, defend (at the MBA's option), indemnify and hold harmless the MBTA, its agents, officers and employees (collectively the "indemnified parties") against any and all claims, demands, liabilities, judgments, penalties, costs, expenses (including attorneys' fees and experts' fees), and damages ("Claims") based on or arising out of any actual or alleged loss or injury (including death) to persons or



damage to real or tangible property, or patent or copyright infringement, that are caused or alleged to be caused, in whole or in part, by, or arising out of the acts or omissions of the Contractor, its agents, servants, employees or subcontractors. The MBTA agrees to notify the Contractor in writing within a reasonable period of time of the assertion of any Claim for which the Contractor has agreed to indemnify the MBTA pursuant to this section. The MBTA shall not be liable for any costs incurred by the Contractor arising under this section. If the MBTA incurs any cost or fees for attorneys or experts, or any other costs or expense, to enforce its right to indemnification or defense under this section, the Contractor shall fully reimburse the MBTA for such costs, fees, and expense.

#### **7.1.11 Waivers**

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor shall it in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

#### **7.1.12 Risk of Loss**

The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, MBTA personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the MBTA.

#### **7.1.13 Forum, Choice of Law, and Mediation**

Any actions arising out of a Contract shall be governed by the laws of Massachusetts and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The MBTA and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

#### **7.1.14 Interpretation, Severability, Conflicts with Law, Integration**

Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these MBTA Terms and Conditions, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 7.1.1 of these MBTA Terms and Conditions (*Section 7.1*). The printed language of the Standard Contract Form (*Section 7*), which incorporates by reference these MBTA Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: any applicable federal provisions, any supplemental provisions, any negotiated terms and conditions allowable pursuant to law or regulation; the printed language of the MBTA Terms and Conditions; the Standard Contract; the MBTA's Request for Response/Proposal/Bid (RFR/RFP/IFB) solicitation document; and the Contractor's Response to the RFR/RFP/IFB solicitation, excluding any language stricken by the MBTA as unacceptable.

#### **7.1.15 Insurance to be Carried by the Contractor**

The successful Contractor shall submit proof of insurance for the requirements detailed in the attached **MBTA Minimum Insurance Requirements** enclosure with this solicitation. The attachment will be included with the solicitation posting on [COMMBUYS](https://www.commbuys.com). If in the case they are not available at the time of preparing their Bid, the successful Contractor certifies that they will carry such insurance policies and all costs resulting from this are included in their pricing. The successful Contractor shall provide proof of



insurance within three business days of conditional notice of award.

### **MBTA Minimum Insurance Requirements**

The Contractor shall carry and maintain, throughout the term of this Contract, including any extensions thereof, all insurance required under this section.

#### **A. Commercial General Liability Insurance**

The Contractor shall carry and maintain Commercial General Liability Insurance covering all operations by or on behalf of the Contractor on an occurrence basis against claims for bodily injury, property damage (including loss of use), personal injury and advertising injury with limits not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate. Terms and conditions for required insurance shall include:

1. Policy Endorsement deleting any exclusion for work within 50 feet of rail.
2. Required insurance coverage specified above shall be placed with insurance companies licensed and/or authorized by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A- or better.
3. Required insurance shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation.
4. Commercial General Liability shall be written on an occurrence basis form, as opposed to a claim made basis form.
5. All such insurance as is required of the Contractor shall be provided by or on behalf of subcontractors to cover their operations performed.
6. At the inception date of this contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance with MBTA named as additional insured and evidencing that such insurance policies, including required limits and sub limits are in place and provide coverage as required.

#### **B. Automobile Liability Insurance**

The Contractor shall carry and maintain Automobile Liability Insurance covering the use of all vehicles: owned, leased, hired and non-owned, with limits not less than \$1,000,000 combined single limit.

1. Required insurance coverage specified above shall be placed with insurance companies licensed and/or authorized by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A- or better.
2. Required insurance shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation.
3. Automobile Liability shall be written on an occurrence basis form, as opposed to a claim made



basis form.

4. At the inception date of this contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance with MBTA named as additional insured and evidencing that such insurance policies, including required limits and sub limits are in place and provide coverage as required.

### **C. Workers' Compensation Insurance.**

The Contractor shall carry and maintain Workers' Compensation Insurance, including Employers Liability Insurance as provided by Massachusetts General Laws, Chapter 152, as amended, covering all work and services performed under the Contract.

1. Employer's Liability requires the following minimum limits:
  - \$1,000,000 Each Accident for Bodily Injury by Accident
  - \$1,000,000 Each Employee for Bodily Injury by Disease
  - \$1,000,000 Aggregate Policy Limit for Bodily Injury by Disease.
2. The required insurances coverage specified above shall be placed with insurance companies licensed and/or authorized by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A- or better.
3. Required insurance shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation.
4. At the inception date of this contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies, including required limits and sub limits are in place and provide coverage as required. Such insurance shall contain a waiver of any and all subrogation rights against the MBTA.

### **D. Umbrella Liability Insurance**

The Contractor shall carry and maintain Umbrella Liability Insurance with limits not less than \$5,000,000 per occurrence and annual aggregate, covering all work and services performed under the Contract.

1. Such insurance shall follow the form of underlying insurance terms and conditions.
2. Required insurance coverage specified above shall be placed with insurance companies licensed and/or authorized by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A- or better.
3. Required insurance shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation.



4. Umbrella/Excess Liability shall be written on an occurrence basis form, as opposed to a claim made basis form.
5. All such insurance as is required of the Contractor shall be provided by or on behalf of subcontractors to cover their operations performed.
6. At the inception date of this contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance with MBTA named as additional insured and evidencing that such insurance policies, including required limits and sub limits are in place and provide coverage as required.

#### **E. Professional Liability or Errors and Omission Insurance**

Contractor shall provide professional liability or errors and omissions coverage with limits not less than \$1,000,000 per claim and aggregate, protecting against any negligent act, error or omission arising out of the Work, including coverage for acts by others for whom Contractor is legally responsible. The policy shall have a retroactive date no later than the date hereof and shall have a five-year extended reporting period with respect to events which occurred, but which were not reported during the term of the policy. The policy shall include as insureds Contractor (including all Participants) and any Subcontractors (including design sub consultants). The policy shall not contain any provision or exclusion to the effect of which would be to prevent, bar or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

1. Required insurance coverage specified above shall be placed with insurance companies licensed and/or authorized by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of A- or better.
2. Required insurance shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation.
3. At the inception date of this contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies, including required limits and sub limits are in place and provide coverage as required.

#### **7.1.16 Contractor Certifications and Legal References**

The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein.

##### **7.1.16.1 MBTA and Contractor Ownership Rights**

The Contractor certifies and agrees that the MBTA is entitled to ownership and possession of all “deliverables” purchased or developed with Contract funds.

##### **7.1.16.2 Qualifications**

The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional,





liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

#### **7.1.16.3 Business Ethics and Fraud, Waste and Abuse Prevention**

The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

#### **7.1.16.4 Collusion**

The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

#### **7.1.16.5 Public Records and Access**

The Contractor shall provide full access to records related to performance and compliance to the MBTA pursuant to G.L. c. 11, s.12 for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied, and Contractor cannot claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse, or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under the Massachusetts Public Records Law.

#### **7.1.16.6 Debarment**

The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation.

#### **7.1.16.7 Applicable Laws**

The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; Code of Massachusetts Regulations 801 CMR 21.00 (Procurement of Commodity and Service Procurements); M G.L. c. 66A; and the Massachusetts Constitution Article XVIII if applicable.

#### **7.1.16.8 Tax Law Compliance**

The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; state tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

#### **7.1.16.9 Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts**

The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing **at least 45 days prior** to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is **any risk** to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill



the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation, or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

#### **7.1.16.10 Federal Anti-Lobbying and Other Federal Requirements**

If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements; Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

#### **7.1.16.11 Protection of Commonwealth Data, Personal Data and Information**

The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth/MBTA data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under M.G.L. c. 93H and c. 66A and other applicable state and federal privacy requirements. The Contractor shall comply with M.G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. The Contractor shall also ensure that any personal data or information transmitted electronically or through a portable device is properly encrypted using (at a minimum) the Commonwealth's "Cryptographic Management Standard" set forth in the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (TSS), or a comparable Standard prescribed by the MBTA. Contractors with access to credit card or banking information of Commonwealth/MBTA customers certify that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards, and shall provide confirmation compliance during the Contract. The Contractor shall immediately notify the MBTA in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the MBTA and provide access to any information necessary for the MBTA to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B. Corporate and Business Filings and Reports

The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the Secretary of and other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, or access to MBTA or Commonwealth systems containing such information or data, Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology Services and Security (TSS), or stricter standards prescribed by the MBTA. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all public authorities, executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with any pertinent security guidelines, standards, and policies; (2) comply with all Enterprise Information Security Policies and Standards published by the Executive Office for Security Services and Technology (TSS), or a comparable set of policies and standards ("Information Security Policy") as prescribed by the MBTA; (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees



(whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the Contractor is given access by the MBTA from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the “unauthorized use”): (a) immediately notify the MBTA if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the MBTA to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the MBTA and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MBTA may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 7.1.10 of MBTA’s [Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L c. 66A.

#### **7.1.16.12 Employer Requirements**

Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 7, s. 22](#) (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); [minimum wages and prevailing wage programs and payments](#); [unemployment insurance and contributions](#); [workers’ compensation and insurance](#), [child labor laws](#), [AGO fair labor practices](#); [G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151](#) and [455 CMR 2.00](#) (Minimum Fair Wages); [G.L. c. 151A](#) (Employment and Training); [G. L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers’ Compensation); [G.L. c.153](#) (Liability for Injuries); [102 CMR 12.00](#) (Dependent Care Assistance Program); [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) and the [Federal Family and Medical Leave Act](#) and M.G.L. c. 175M (Family and Medical Leave).

#### **7.1.16.13 Federal And State Laws and Regulations Prohibiting Discrimination**

Contractors certify compliance with applicable state and federal anti-discrimination laws including but not limited to the [Federal Equal Employment Opportunity \(EEO\) Laws](#) the [Americans with Disabilities Act](#),; [42 U.S.C Sec. 12,101, et seq.](#), the Rehabilitation Act, [29 USC c. 16 s. 794](#); [29 USC c. 16. s. 701](#); [29 USC c. 14, 623](#); the [42 USC c. 45](#); (Federal Fair Housing Act); [G. L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); the Public Accommodations Law [G.L. c. 272, s. 92A](#); [G.L. c. 272, s. 98](#) and [98A](#), [Massachusetts Constitution Article CXIV](#) and [G.L. c. 93, s. 103](#); [47 USC c. 5, sc. II, Part II, s. 255](#) (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and [Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities](#), and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also [MCAD](#) and [MCAD links and Resources](#).

#### **7.1.16.14 Right-to-Know Law**

The Contractor shall certify that it will comply with the Massachusetts Right-To-Know Law, Chapter 470 of the Acts of 1983. Additionally, the Contractor agrees to submit a Safety Data Sheet (SDS) for each toxic or hazardous substance, or mixture containing such substance, pursuant to [M.G.L. c. 111F](#) §§ 8, 9, and 10, and the regulations contained in 441 CMR § 21.06 when deliveries are made.



#### **7.1.16.15 Small Business Purchasing Program (SBPP)**

A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP COMMBUYS subscription process at: [www.commbuys.com](http://www.commbuys.com) and with acceptance of the terms of the SBPP participation agreement.

#### **7.1.16.16 Other Damages**

The term “other damages” shall include, but shall not be limited to, the reasonable costs the MBTA incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. “Other damages” shall not include damages to the MBTA as a result of third-party claims, provided, however, that the foregoing in no way limits the MBTA’s right of recovery for personal injury or property damages or patent and copyright infringement under *Section 7.1.10* nor the MBTA’s ability to join the contractor as a third-party defendant. Further, the term “other damages” shall not include, and in no event shall the contractor be liable for, damages for the MBTA’s use of contractor provided products or services, loss of MBTA records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings, or lost profits of the MBTA. In no event shall “other damages” exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. *Section 7.1.10* sets forth the contractor’s entire liability under a Contract. Nothing in this section shall limit the MBTA’s ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference *Section 7.1.10* of the MBTA Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement.

#### **7.1.16.17 Northern Ireland Certification**

Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

#### **7.1.16.18 Pandemic, Disaster or Emergency Performance**

In the event of a serious emergency, pandemic, or disaster outside the control of the MBTA, the MBTA may negotiate emergency performance from the Contractor to address the immediate needs of the MBTA even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

#### **7.1.16.19 Subcontractor Performance**

The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to manage subcontractors directly or indirectly or have any payment obligations to subcontractors.

### **7.1.17 Executive Orders**

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.



**7.1.17.1 Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts**

For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

**7.1.17.2 Executive Order 130. Anti-Boycott**

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)- (4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the MBTA shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

**7.1.17.3 Executive Order 346. Hiring of State Employees By State Contractors**

Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the MBTA. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

**7.1.17.4 Executive Order 444. Disclosure of Family Relationships with Other State Employees**

Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

**7.1.17.5 Executive Orders 523, 524, and 526**

Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program). Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity, and Affirmative Action which supersedes Executive Order 478). Executive Order 565 (Reaffirming and Expanding the Massachusetts Supplier Diversity Program). All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices. The Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices. The Contractor also commits to purchase supplies and



services from certified minority, women, veteran, service-disabled veteran, LGBT or disability-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons; and Contractor commits to comply with any applicable Department contractual requirements pertaining to the employment of persons with disabilities pursuant to M.G.L. c. 7 s. 61(s). These provisions shall be enforced through the contracting Department, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

#### **7.1.17.6 Laws and Regulations Prohibiting Discrimination and Human Trafficking**

Contractors acknowledge and certify as a condition of this Contract that they are responsible for complying fully with all state and federal laws prohibiting discrimination, human trafficking, and forced labor, including but not limited to Chapter 178 of the Acts of 2011.

### **7.1.18 Supplemental Provisions**

#### **7.1.18.1 Applicability**

Where applicable, these Supplemental Provisions shall apply to this IFB # 171C-22. In the event of a conflict or disparity between these Supplemental Provisions and Standard Terms & Conditions, the Supplemental Provisions govern.

#### **7.1.18.2 Performance Guarantee**

There is no Performance Guarantee required for this contract.

#### **7.1.18.3 Liquidated Damages**

There are no Liquidated Damages required for this contract.

#### **7.1.18.4 Security Requirements**

The Contractor shall certify that it will comply with the MBTA's Security Requirements as stated herein. The selected Contractor shall:

1. Submit a complete list of Contractor's employees, subcontractors, and agents that will perform work for the MBTA under this Contract. This list must be submitted prior to eligibility consideration for payment of delivery or completion of the first milestone. At a minimum, the list shall include:
  - a) Name and Employee Number/Identifier
  - b) Address
  - c) Job Title
  - d) Hours and Location of Work

Note: Immediate notification, in writing, is required for listed employees, subcontractors, and agents who leave Contractor's (direct or indirect) employment and/or any new employees, subcontractors or agents who are to be added to this list. Contractor is required to provide, upon request by the MBTA, periodic updates of the list throughout the life of the Contract.

2. Conduct for all current and future employees performing work under this Contract, a legally available criminal background check, including a Criminal Offender Record Information (CORI) background check with the Massachusetts Criminal History Systems Board and a driver's history check with the Massachusetts registry of Motor vehicles (if applicable). The CORI check shall include a Level II Sex Offenders Registry check. To the extent not already available to the Contractor, the Contractor shall apply for and make best efforts to obtain CORI access. The



Contractor shall provide written documentation to the Authority that demonstrates the Contractor's compliance with the aforementioned requirements. Furthermore, the Contractor shall conduct these background and driver history checks at least once every two (2) years, or as otherwise specified by the MBTA. Any employee of the Contractor's with a history that includes a felony conviction, any conviction for theft, or who appears otherwise unsuitable to perform the work that is the subject of this solicitation throughout the Term of this Agreement or any extensions thereof, shall not be assigned by the Contractor to perform work under this Agreement.

The MBTA reserves the right to have MBTA Transit Police perform the required background checks and shall promptly notify the Contractor in writing of any such action.

3. Distribute an MBTA-issued photograph Contractor identification badge to all Contractor employees, subcontractors, and agents who work on MBTA property. The contractor shall provide a current (less than 1 year old) photograph to the MBTA, along with the required completed badge issuance paperwork prior to being issued the badges. The following information shall be listed on the back of the contractor identification badges training certifications, safety training, and other related security training required by the MBTA. No employee, subcontractor or agent of the Contractor will be allowed on MBTA property without clearly displaying the MBTA-issued identification badge on their person.
4. Insure that Contractor's employees, subcontractors, and agents:
  - a) Are not allowed on MBTA property except as required for stated work.
  - b) Are not allowed on MBTA property before and after service hours unless explicitly, contractually required to be there; and
  - c) Are forbidden from carrying firearms on MBTA property.
5. Provide to the MBTA, upon its request, any documents that pertain to:
  - a) Contractor employee, subcontractor or agent conduct on MBTA property.
  - b) Security training; and
  - c) Monitoring/auditing of Contractor employees or agents while on MBTA property.
6. If, at any time during the term of this Agreement, and during any and all extensions thereof, the MBTA establishes new or revised security policies and procedures as they relate to the Contractor's performance under this Agreement, the Contractor shall comply with such policies and procedures as deemed reasonable by the MBTA and the Contractor.

#### **7.1.18.5 Right-of-Way Safety Training and Minimum PPE Requirements**

In the event the Contractor's work is to be performed in proximity to railroad or subway tracks, the Contractor shall obtain appropriate Right of Way (ROW) safety training from the MBTA before commencing work. In addition, the Contractor shall comply with the MBTA minimum personal protective equipment (PPE) requirements for personnel performing work within the ROW.

Any exceptions to the below-referenced minimum PPE requirements must be approved by MBTA Safety Department.



PPE	MINIMUM RECOMMENDED PPE TYPE
Hard Hat	OSHA 1910.135, ANSI Z89.1 and NFPA 70E 130.7, Type I, Class E
Safety Eyeglasses	OSHA 1910.133 and ANSI/ISEA Z87.1
Work Boot	OSHA 1910.136, ASTM F-2412-18a & ASTM F-2413-18 Composite Toe, EH-Electrical Hazard Resistant, PR-Puncture Resistant, Slip Resistant, 6-inch, Defined Heel
Upper Body Safety Reflective Garment	ANSI/ISEA 107 High visibility, yellow-green, retro reflective, Class 2, Type R, 5-point breakaway (vest only), "X" stripe pattern on back (MBTA requirement)
<b>ADDITIONAL MBTA REQUIREMENTS FOR ROW ACCESS</b>	<b>MINIMUM ROW ACCESS REQUIREMENTS</b>
Right-of-Way (ROW) License	MBTA valid (unexpired) ROW license on person (Employee and Contractor) ANSI/NEMA FL 1-2009
Flashlight (Hand-held)	LED, Polypropylene industrial construction, 35 Lumens, 45 meters, 100 hours, Impact & Water resistant
Whistle	High-impact plastic, sharp loud blast, >120dB, 3150 hertz tone preferred
Lower Body Safety Garment	Full Length Pants (Cotton or Wool preferred)

#### 7.1.19 Terms & Conditions Signature

**IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these MBTA Terms and Conditions under Section 7.1 for any applicable Contract executed with the MBTA as certified by their authorized signatory below:**

**Contractor Authorized Signatory:** \_\_\_\_\_

Print Name: \_\_\_\_\_

(BLOCK LETTERS)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Check one) \_\_\_\_\_

Organization \_\_\_\_\_

Individual \_\_\_\_\_

<b>Full legal Organization or Individual Name:</b>	
<b>Doing Business as Name (If Different):</b>	
<b>Tax Identification Number:</b>	
<b>Address:</b>	





<b>Phone:</b>	<input type="text"/>	<b>Fax:</b>	<input type="text"/>
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